

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CARLA AND CLARENCE COOPER,	:	CIVIL ACTION
Plaintiffs,	:	
	:	
v.	:	
	:	
THE FRANKFORD HOSPITAL OF	:	
THE CITY OF PHILADELPHIA,	:	
PETER VANEERDEN, and	:	
JOHN DOE,	:	
Defendants.	:	NO. 99-292

MEMORANDUM AND ORDER

J. M. KELLY, J.

AUGUST 10, 1999

Presently before the Court is Defendants Frankford Hospital and Peter Vaneerden's Motion to Dismiss. For the reasons that follow, Defendants' motion is granted in part.

I. FACTUAL ALLEGATIONS

Plaintiff Carla Cooper was a patient of Vaneerden's obstetrics and gynecology practice at Frankford Hospital in Philadelphia. On January 21, 1997, Vaneerden delivered Carla Cooper's child by performing a Cesarian section. Although the delivery apparently resulted in a healthy baby, Carla Cooper has experienced numbness and paralysis in and around where Vaneerden operated on her. She and her husband allege these injuries are the result of Vaneerden's negligence, as well as the negligence of the hospital and the anesthesiologist who took care of her.

II. DISCUSSION

Defendants' Motion to Dismiss

Defendants first move to dismiss Plaintiffs' complaint for failure to serve Frankford

Hospital within one hundred and twenty days. It is Plaintiffs' burden to show they have made valid service on Defendant, see Suegart v. U.S. Customs Serv., 180 F.R.D. 276, 278 (E.D. Pa. 1998), and they have satisfied that burden under Rule 12(b)(5) by providing an Affidavit of Service from a process server showing he effected service on May 17, 1999, one hundred and fourteen days after Plaintiffs filed their complaint. The Court accordingly will decline to dismiss Plaintiffs' complaint against Frankford Hospital.

Defendants next move to strike a subparagraph as "an improper and overbroad 'catch-all' allegation." They claim this allegation, that Defendants were "otherwise negligent and careless and [] committed malpractice upon the Plaintiff," (Compl. ¶ 15(j)), will enable Plaintiffs to engage in a "fishing expedition." This argument seems designed to allege Defendants will be prejudiced if the subparagraph remains, but the Court finds whatever prejudice this standard allegation will visit on Defendants falls short of meeting the standard of Rule 12(f). See also Phillips v. Dalton, No. 94-4828, 1997 WL 24846, at *3 n.7 (E.D. Pa. Jan. 22, 1997) (finding a proposed exhibit was not sufficiently prejudicial to warrant striking), aff'd, 151 F.3d 1026 (3d Cir. 1998) (table). Defendants' motion to strike is denied.

Defendants' motion to dismiss Plaintiffs' claims against the "John Doe" anesthesiologist also will be denied. Plaintiffs represent that the medical records they have received so far either are illegible or do not provide a name in the place reserved for the anesthesiologist, and so they decided to employ this fictitious name rather than erroneously name another physician as a Defendant. Their uncertainty, however, should resolve as discovery progresses, and Plaintiffs will name the "John Doe" anesthesiologist as soon as they learn his identity.

Defendants finally move to strike Count 5 of Plaintiffs' Complaint on the ground that it

purports to state a cause of action under the doctrine res ipsa loquitur. Defendants note this doctrine is not itself a cause of action, a proposition with which Plaintiffs agree. Defendants, however, are technically correct that this evidentiary doctrine should not appear as its own count, see McClenathan v. Rhone-Poulenc, Inc., 926 F. Supp. 1272, 1281 (S.D.W. Va. 1996), and so the Court will grant Defendants' motion, although Plaintiffs certainly will not be prevented from pursuing this theory at trial.

An Order follows.

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Defendants.	:	NO. 99-292

ORDER

AND NOW, this 10th day of August, 1999, upon consideration of Defendants The Frankford Hospital of the City of Philadelphia, Peter Vaneerden, and John Doe's Motion to Dismiss (Document No. 5), and Plaintiffs Carla and Clarence Cooper's response thereto, it is hereby **ORDERED**:

1. Defendants' motion is **GRANTED** in part;
2. Defendants' motion to strike Count 5 of Plaintiffs' Complaint is **GRANTED**; and
3. Defendants' motion is **DENIED** in all other respects.

BY THE COURT:

JAMES McGIRR KELLY, J.